

INCOME TAX

Federal Change (Individual)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

V.

TAXPAYERS

Taxpayer(s)

No.
SSN:

Daniel D. Mangiamele
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

This matter is before this administrative tribunal as a result of a timely Request for Hearing by TAXPAYERS (hereinafter referred to as the "taxpayers") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on July 7, 1995 for the tax year ending December 31, 1990, and 1991. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayer had failed to file an Illinois Income Tax return for the year ending December 31, 1990, and 1991. The Notice asserted an increased tax liability, as well as penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 for failure to pay the entire tax liability by the due date and failure to pay estimated tax respectively. In lieu of conducting a hearing, taxpayers requested that they be permitted to produce documents consisting of, inter alia, their Illinois 1040 returns for the taxable years.

The issues to be resolved are:

- (1) Whether the taxpayers failed to file an Illinois income tax return for the tax years 1990, and 1991?
- (2) Whether penalties should be assessed pursuant to 35 **ILCS** 5/1001, 5/1005, and 5/804?

Following the submission of all evidence and a review of the record, it is recommended that the Notice of Deficiency be reduced in accordance with this recommendation.

Findings of Fact:

(1) The Department of Revenue adjusted taxpayer's taxable income to include a completed and settled federal change.

(2) The Department of Revenue issued a Notice of Deficiency for the subject taxable years in the amount of \$5,937.00 inclusive of interest and penalties.

(3) Taxpayers did not file Illinois income tax returns for the years 1990, and 1991 on time, the entire tax liability was not paid by the due date and the required estimated payments were not paid.

(4) Prior to any hearing being held, taxpayer's representative submitted copies of the 1990 and 1991 IL-1040's along with payments of \$344.00 for 1990 and \$243.00 for 1991 to avoid the need for an administrative hearing.

(5) Taxpayer was allowed credit for Illinois tax withheld in the amount of \$1,004.00 for 1990, \$1,190.00 for 1991 and \$101.00 for Illinois property tax for the year 1991.

(6) The total balance due for 1990 amounted to \$296.00 and the balance due for 1991 is \$98.00.

Conclusions of Law:

All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a). The taxpayers, as Illinois residents who earned income in this state, were accordingly subject to Illinois income tax and were required to timely pay and file a return under the Illinois Income Tax Act. (35 ILCS 5/101 *et seq.*)

The Notice of Deficiency is *prima facie* correct so long as its proposed adjustments meet some minimum standard of reasonableness. Vitale v. Illinois Department of Revenue, 118 Ill. App.3d 210 (3rd Dist. 1983). In order to overcome this *prima facie* correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. Masini v. Department of Revenue, 60 Ill. App.3d 11 (1st Dist. 1978). The taxpayer has partially met this burden in this case.

The taxpayer's documentation and payments reduced the tax liability as set forth in findings of fact numbers 4, 5, and 6.

In addition to asserting a tax deficiency, the Notice proposes penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 for failure to file, failure to pay the entire tax liability by the due date and failure to pay estimated tax, respectively. Having determined that the taxpayers have failed to file and pay income tax for the 1990, and 1991 tax year, the issue of imposition of these penalties is proper and should be assessed accordingly.

It is my recommendation that this case be decided in favor of the Department and against the taxpayers and the Notice of Deficiency be reduced to conform to this recommendation.

Daniel D. Mangiamele
Administrative Law Judge